

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICTOR GARCIA,

Plaintiff,

v.

2:20-cv-00601-GJF-CG

DOUGLAS FORD CHIEF CLOVIS
POLICE DEPARTMENT, DETECTIVE
ALBERT SENA, SERGEANT RAFAEL AGUILAR,
OFFICER BRICE STACEY, OFFICER
DARREN MCPHERSON, OFFICER JACOB BONNER, OFFICER
STEVEN COPE, OFFICER DAGOBERTO RODRIGUEZ,
OFFICER SANTINO AND JOHN DOE 1 CURRY COUNTY
DETENTION CENTER,

Defendants.

**DEFENDANTS ALBERT SENA, RAFAEL AGUILAR, DARREN MCPHERSON,
JACOB BONNER AND STEVEN COPE'S ANSWER TO PLAINTIFF'S
AMENDED COMPLAINT**

COMES NOW Defendants Douglas Ford, Albert Sena, Rafael Aguilar, Brice Stacey, Darren McPherson, Jacob Bonner, Steven Cope and Dagoberto Rodriguez (hereinafter "Defendants"), by and through counsel Lewis Brisbois Bisgaard & Smith LLP (Gregory L. Biehler and Erin L. Chavez), and for their Answer Plaintiff's Amended Complaint state as follows:

JURISDICTION

1. Defendants admit the allegations in Paragraph 1 of Plaintiff's Amended Complaint.

VENUE

2. Defendants admit the allegations in Paragraph 2 of Plaintiff's Amended Complaint.
3. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint and therefore deny the same.

4. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint and therefore deny the same.

PARTIES

1. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint and therefore deny the same.

2. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint and therefore deny the same.

3. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint and therefore deny the same.

4. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint and therefore deny the same.

5. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint and therefore deny the same.

6. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 6 of Plaintiff's Amended Complaint and therefore deny the same.

7. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint and therefore deny the same.

8. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint and therefore deny the same.

9. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint and therefore deny the same.

FACTS

1. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint and therefore deny the same.
2. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint and therefore deny the same.
3. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Amended Complaint and therefore deny the same.
4. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Amended Complaint and therefore deny the same.
5. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 5 of Plaintiff's Amended Complaint and therefore deny the same.
6. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 6 of Plaintiff's Amended Complaint and therefore deny the same.
7. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 7 of Plaintiff's Amended Complaint and therefore deny the same.
8. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 8 of Plaintiff's Amended Complaint and therefore deny the same.
9. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 9 of Plaintiff's Amended Complaint and therefore deny the same.
10. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 10 of Plaintiff's Amended Complaint and therefore deny the same.
11. Defendants admit Detective Sena drew his gun and pointed it at Plaintiff. Defendants deny the rest of the allegations contained in Paragraph 11 of Plaintiff's Amended Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

13. Defendants deny the allegations contained in Paragraph 12 of Plaintiff's Amended Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of Plaintiff's Amended Complaint.

15. Defendants deny the allegations contained in Paragraph 15 of Plaintiff's Amended Complaint.

16. Defendants deny the allegations contained in Paragraph 16 of Plaintiff's Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of Plaintiff's Amended Complaint.

19. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 19 of Plaintiff's Amended Complaint and therefore deny the same.

20. Defendants deny the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint.

21. Defendants deny the allegations contained in Paragraph 21 of Plaintiff's Amended Complaint.

22. Defendants deny the allegations contained in Paragraph 22 of Plaintiff's Amended Complaint.

23. Defendants deny the allegations contained in Paragraph 23 of Plaintiff's Amended Complaint.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiff's Amended Complaint.

25. Defendants deny the allegations contained in Paragraph 25 of Plaintiff's Amended Complaint.

26. Defendants deny the allegations contained in Paragraph 26 of Plaintiff's Amended Complaint.

27. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 27 of Plaintiff's Amended Complaint and therefore deny the same.

28. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 28 of Plaintiff's Amended Complaint and therefore deny the same.

29. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 29 of Plaintiff's Amended Complaint and therefore deny the same.

30. Defendants deny the allegations contained in Paragraph 30 of Plaintiff's Amended Complaint.

31. Defendants deny the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint.

32. Defendants deny that they conducted a strip search in full public view. Defendants are without sufficient information to admit or deny the rest of the allegations contained in Paragraph 32 of Plaintiff's Amended Complaint and therefore denies the same.

33. Defendants deny the allegations contained in Paragraph 33 of Plaintiff's Amended Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of Plaintiff's Amended Complaint.

35. Defendants admit Sergeant Aguilar ordered Plaintiff to "throw" on the ground whatever was stuffed down his underwear. Defendants deny the rest of the allegations contained in Paragraph 35 of Plaintiff's Amended Complaint.

36. Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Amended Complaint.

37. Defendants deny the allegations contained in Paragraph 37 of Plaintiff's Amended Complaint.

38. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 38 of Plaintiff's Amended Complaint and therefore deny the same.

39. Defendants deny the allegations contained in Paragraph 39 of Plaintiff's Amended Complaint.

40. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 40 of Plaintiff's Amended Complaint and therefore deny the same.

41. Defendants deny the allegations contained in Paragraph 41 of Plaintiff's Amended Complaint.

42. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 42 of Plaintiff's Amended Complaint and therefore deny the same.

43. Defendants deny the allegations contained in Paragraph 43 of Plaintiff's Amended Complaint.

44. Defendants admit Plaintiff was transported to the Curry County Adult Detention Center.

45. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 45 of Plaintiff's Amended Complaint and therefore deny the same.
46. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 46 of Plaintiff's Amended Complaint and therefore deny the same.
47. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 47 of Plaintiff's Amended Complaint and therefore deny the same.
48. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 48 of Plaintiff's Amended Complaint and therefore deny the same.
49. Defendants admit that Officer Jacob Bonner and Officer Darren McPherson were present at the Curry County Adult Detention Center. Defendants are without sufficient information to admit or deny the rest of the allegations contained in Paragraph 49 of Plaintiff's Amended Complaint and therefore deny the same.
50. Defendants admit the allegations contained in Paragraph 50 of Plaintiff's Amended Complaint.
51. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 51 of Plaintiff's Amended Complaint and therefore deny the same.
52. Defendants admit the allegations contained in Paragraph 52 of Plaintiff's Amended Complaint.
53. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 53 of Plaintiff's Amended Complaint and therefore deny the same.
54. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 54 of Plaintiff's Amended Complaint and therefore deny the same.

55. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 55 of Plaintiff's Amended Complaint and therefore deny the same.

56. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 56 of Plaintiff's Amended Complaint and therefore deny the same.

57. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 57 of Plaintiff's Amended Complaint and therefore deny the same.

58. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 58 of Plaintiff's Amended Complaint and therefore deny the same.

59. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 59 of Plaintiff's Amended Complaint and therefore deny the same.

60. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 60 of Plaintiff's Amended Complaint and therefore deny the same.

61. Defendants admit Plaintiff has an appeal pending before the New Mexico Court of Appeals. Defendants are without sufficient information to admit or deny the rest of the allegations contained in Paragraph 61 of Plaintiff's Amended Complaint and therefore deny the same.

62. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 62 of Plaintiff's Amended Complaint and therefore deny the same.

63. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 61 of Plaintiff's Amended Complaint and therefore deny the same.

64. Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 64 of Plaintiff's Amended Complaint and therefore deny the same.

COUNT ONE: FAILURE TO TRAIN

65. In response to the allegations contained in Paragraph 65 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 64 as if contained herein.

66. Defendants deny the allegations contained in Paragraph 66 of Plaintiff's Amended Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of Plaintiff's Amended Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of Plaintiff's Amended Complaint.

COUNT TWO: VIOLATION OF FOURTH AMENDMENT RIGHTS FOR ILLEGAL SEIZURE

69. In response to the allegations contained in Paragraph 69 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 68 as if contained herein.

70. Defendants deny the allegations contained in Paragraph 70 of Plaintiff's Amended Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of Plaintiff's Amended Complaint.

72. Defendants deny the allegations contained in Paragraph 72 of Plaintiff's Amended Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of Plaintiff's Amended Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of Plaintiff's Amended Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of Plaintiff's Amended Complaint.

**COUNT THREE: VIOLATION OF FOURTH AMENDMENT RIGHTS SURING
MULTIPLE AND EXCESSIVE SEARCHES OF PLAINTIFF'S PERSON**

76. In response to the allegations contained in Paragraph 76 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 75 as if contained herein.

77. Defendants deny the allegations contained in Paragraph 77 of Plaintiff's Amended Complaint.

78. Defendants deny the allegations contained in Paragraph 78 of Plaintiff's Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of Plaintiff's Amended Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of Plaintiff's Amended Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of Plaintiff's Amended Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of Plaintiff's Amended Complaint.

83. Defendants deny the allegations contained in Paragraph 83 of Plaintiff's Amended Complaint.

**COUNT FOUR: VIOLATION OF FOURTH AMENDMENT RIGHTS
FOR ILLEGAL ARREST**

84. In response to the allegations contained in Paragraph 84 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 83 as if contained herein.

85. Defendants deny the allegations contained in Paragraph 85 of Plaintiff's Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of Plaintiff's Amended Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of Plaintiff's Amended Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of Plaintiff's Amended Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of Plaintiff's Amended Complaint.

**COUNT FIVE: VIOLATION OF FOURTH AMENDMENT RIGHTS
DURING PUBLIC STRIP SEARCH**

90. In response to the allegations contained in Paragraph 90 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 89 as if contained herein.

91. Defendants deny the allegations contained in Paragraph 91 of Plaintiff's Amended Complaint.

92. Defendants deny the allegations contained in Paragraph 92 of Plaintiff's Amended Complaint.

93. Defendants deny the allegations contained in Paragraph 93 of Plaintiff's Amended Complaint.

94. Defendants deny the allegations contained in Paragraph 94 of Plaintiff's Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of Plaintiff's Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of Plaintiff's Amended Complaint.

**COUNT SIX: VIOLATION OF FOURTH AMENDMENT RIGHTS FOR WRONGFUL
ARREST BASED ON UNREASONABLE PUBLIC STRIP SEARCH**

97. In response to the allegations contained in Paragraph 97 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 96 as if contained herein.

98. Defendants deny the allegations contained in Paragraph 98 of Plaintiff's Amended Complaint.

99. Defendants deny the allegations contained in Paragraph 99 of Plaintiff's Amended Complaint.

100. Defendants deny the allegations contained in Paragraph 100 of Plaintiff's Amended Complaint.

101. Defendants deny the allegations contained in Paragraph 101 of Plaintiff's Amended Complaint.

**COUNT SEVEN: VIOLATION OF FOURTH AMENDMENT RIGHTS
DURING SECOND STRIP SEARCH**

102. In response to the allegations contained in Paragraph 102 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 101 as if contained herein.

103. Defendants deny the allegations contained in Paragraph 103 of Plaintiff's Amended Complaint.

104. Defendants deny the allegations contained in Paragraph 104 of Plaintiff's Amended Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of Plaintiff's Amended Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of Plaintiff's Amended Complaint.

107. Defendants deny the allegations contained in Paragraph 107 of Plaintiff's Amended Complaint.

108. Defendants deny the allegations contained in Paragraph 108 of Plaintiff's Amended Complaint.

109. Defendants deny the allegations contained in Paragraph 109 of Plaintiff's Amended Complaint.

**COUNT EIGHT: VIOLATION OF FOURTEENTH AMENDMENT
RIGHTS – EQUAL PROTECTION**

110. In response to the allegations contained in Paragraph 110 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 109 as if contained herein.

111. Defendants deny the allegations contained in Paragraph 111 of Plaintiff's Amended Complaint.

112. Defendants deny the allegations contained in Paragraph 112 of Plaintiff's Amended Complaint.

113. Defendants deny the allegations contained in Paragraph 113 of Plaintiff's Amended Complaint.

114. Defendants deny the allegations contained in Paragraph 114 of Plaintiff's Amended Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of Plaintiff's Amended Complaint.

116. Defendants deny the allegations contained in Paragraph 116 of Plaintiff's Amended Complaint.

**COUNT NINE: VIOLATION OF FOURTEENTH AMENDMENT
RIGHTS – DUE PROCESS OF LAW**

117. In response to the allegations contained in Paragraph 117 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 116 as if contained herein.

118. Defendants deny the allegations contained in Paragraph 118 of Plaintiff's Amended Complaint.

119. Defendants deny the allegations contained in Paragraph 119 of Plaintiff's Amended Complaint.

120. Defendants deny the allegations contained in Paragraph 120 of Plaintiff's Amended Complaint.

121. Defendants deny the allegations contained in Paragraph 121 of Plaintiff's Amended Complaint.

122. Defendants deny the allegations contained in Paragraph 122 of Plaintiff's Amended Complaint.

123. Defendants deny the allegations contained in Paragraph 123 of Plaintiff's Amended Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of Plaintiff's Amended Complaint.

**COUNT TEN: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS DURING
UNCONSTITUTIONAL PUBLIC STRIP SEARCH**

125. In response to the allegations contained in Paragraph 125 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 124 as if contained herein.

126. Defendants deny the allegations contained in Paragraph 126 of Plaintiff's Amended Complaint.

127. Defendants deny the allegations contained in Paragraph 127 of Plaintiff's Amended Complaint.

128. Defendants deny the allegations contained in Paragraph 128 of Plaintiff's Amended Complaint.

129. Defendants deny the allegations contained in Paragraph 129 of Plaintiff's Amended Complaint.

130. Defendants deny the allegations contained in Paragraph 130 of Plaintiff's Amended Complaint.

**COUNT ELEVEN: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
DURING SECOND UNREASONABLE STRIP SEARCH**

131. In response to the allegations contained in Paragraph 131 of Plaintiff's Amended Complaint, Defendants reallege and incorporate their responses to Paragraph 1 through 130 as if contained herein.

132. Defendants deny the allegations contained in Paragraph 132 of Plaintiff's Amended Complaint.

133. Defendants deny the allegations contained in Paragraph 133 of Plaintiff's Amended Complaint.

134. Defendants deny the allegations contained in Paragraph 134 of Plaintiff's Amended Complaint.

135. Defendants deny the allegations contained in Paragraph 135 of Plaintiff's Amended Complaint.

136. Defendants deny the allegations contained in Paragraph 136 of Plaintiff's Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

1. Plaintiff's claims fail to state a cause of action upon which relief may be obtained.

SECOND AFFIRMATIVE DEFENSE

2. These Defendants are immune and qualifiedly immune from the claims being made by Plaintiff.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claims are limited by any failure to mitigate.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiff's claims are barred by the statute of limitations, and failure to timely serve each and every Defendant.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiff's claims are barred by estoppel and laches.

SIXTH AFFIRMATIVE DEFENSE

6. These Defendants reserve the right to assert such other and further defenses that may become apparent from discovery and/or investigation.

WHEREFORE, these Defendants respectfully requests this Court to enter an order dismissing Plaintiff's Amended Complaint with prejudice, for costs, fees, and such other or further relief as the Court may deem just.

A jury is demanded by these Defendants of all facts so triable.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Gregory L. Biehler
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Erin L. Chavez
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2021, I filed the foregoing electronically through the Court's CMECF filing system, which caused the following parties to be served by electronic means, as per the Notice of Electronic Filing:

Freeman C. Faust
The Faust Law Firm
freemanfaust@thefaustlawfirm.com

/s/Gregory L. Biehler

Gregory L. Biehler